



IDAHO DEPARTMENT
OF HEALTH AND WELFARE

DIVISION OF
ENVIRONMENTAL QUALITY

Consent Order

EPI

HLW-102 970

APR 10 1992

ENVIRONMENTAL
SUPPORT BRANCH

1410 North Hilton, Statehouse Mail, Boise, ID 83720-9000, (208) 334-0502

Cecil D. Andrus, Governor Richard P. Donovan, Director

April 7, 1992

CERTIFIED MAIL # P 754 865 581
RETURN RECEIPT REQUESTED

Department of Energy
ATTENTION Rob Rothman, Chief
Idaho Field Office
Environmental Support Branch
785 DOE Place
Idaho Falls, Idaho 83401-1562

Re: Copy of Signed INEL Consent Order

Dear Mr. Rothman:

Enclosed is a signed copy of the Consent Order addressing alleged violations at the facility. We appreciate your cooperation in this matter.

If you have any questions, please contact me at (208) 334-5898.

Sincerely,

Brian Monson, Acting Chief
Operating Permit Bureau
Permits & Enforcement

BM/lb/bm'doe.ltr

Enclosure

cc: Betty Weiss, Chief RCRA Compliance - EPA/Region 10
John McCreedy, Deputy Attorney General
Jeff Rodin - EPA/Region 10 Mail Stop HW - 124

URGENT

*This is the signed Consent order
from the state. Please read,
as a minimum, violation No. 20.
This will affect our planning
and operations for years to
come.
Brent*

1st modified
to Consent Order

MAR 24 1994

ENVIRONMENTAL
SUPPORT BRANCH



Brent Palmer

copies to Conklin -
Bob Jones -
Mike Harkins -
Will Smith -
Sandra [unclear] -
[Signature]

LARRY ECHOHAWK
ATTORNEY GENERAL

KEVIN J. BEATON
LORE BENDEL
DOUGLAS M. CONDE
KATHERINE B. CRAWFORD
CURT A. FRANSEN
NORA A. FUENTES
TERESA A. HAMPTON
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DEPUTY ATTORNEYS GENERAL

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

NATURAL RESOURCES DIVISION
ENVIRONMENTAL QUALITY UNIT
1410 N. HILTON, 2ND FLOOR
BOISE, IDAHO 83706
TELEPHONE: (208) 334-0292
FACSIMILE: (208) 334-0578

March 22, 1994

RECEIVED

MAR 23 1994

OFFICE OF THE CHIEF COUNSEL

Brett R. Bowhan
Assistant Chief Counsel
U.S. Department of Energy
Idaho Operations Office MS-1209
785 DOE Place
Idaho Falls, Idaho 83402

Re: Modification to Consent Order

Dear Brett:

Enclosed is a fully executed copy of the Modification to Consent Order for your records. Thank you for your cooperation in this matter.

Sincerely,

[Signature]
Teresa A. Hampton
Deputy Attorney General
INEL Oversight Program

TAH/lvh

cc: Brian Monson

Enclosure

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9 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
10 BEFORE THE REGIONAL ADMINISTRATOR
11 REGION 10
12 1200 Sixth Avenue
13 Seattle, Washington 98101
14
15

16 IN THE MATTER OF:) DOCKET NO. 1090-1-24-6001
17 THE UNITED STATES DEPARTMENT OF ENERGY) NOTICE OF NONCOMPLIANCE
18 IDAEO OPERATIONS OFFICE)
19)
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SECTION I.

INTRODUCTION

A. This NOTICE OF NONCOMPLIANCE (Notice) is issued under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) and further amended by the Hazardous and Solid Waste Amendments (ESWA). This Notice is issued consistent with Executive Order 12088, Federal Compliance With Pollution Control Standards. The authority to issue this Notice has been delegated by the Administrator of the United States Environmental Protection Agency (EPA) to the Regional Administrator of EPA, Region 10 and further delegated to the Director, Hazardous Waste Division, EPA Region 10.

B. EPA is issuing this Notice to the United States Department of Energy, Idaho Operations Office, Idaho Falls, Idaho as a result of inspections of the Idaho National Engineering Laboratory (INEL), which provide evidence that Respondent has violated or is in violation of one or more requirements of Subtitle C of RCRA and the regulations promulgated thereunder concerning the management of hazardous waste.

C. Pursuant to Section 6001 of RCRA, 42 U.S.C. § 6961, the Respondent, as a department of the executive branch of the federal government, and as a generator of hazardous waste and operator of a hazardous waste management facility, is subject to and must comply with federal requirements, including regulations and permit conditions pertaining to the management of hazardous

1 waste in the manner and to the same extent as any person is subject
2 to such requirements.

3 D. Any person, as defined in Section 1004(15) of RCRA,
4 U.S.C. § 6903(15), who has violated or is violating any
5 requirements of Subtitle C of RCRA or who knowingly violates any
6 material conditions or requirements of a RCRA permit or interim
7 status regulations or standards may be subject to administrative,
8 civil and/or criminal sanctions under Section 3008 of RCRA,
9 42 U.S.C. § 6928. In addition, Section 7002 of RCRA,
10 42 U.S.C. § 6972, provides for citizen suits against any person who
11 is alleged to be in violation of any permit, standard, regulation,
12 condition, requirement, prohibition or final order under RCRA.

13 E. In order to return to compliance, Respondent must
14 implement the actions prescribed in Section IV of this document
15 within the time frames stipulated. Two possible alternatives to
16 this action by the Respondent are (1) the seeking of a Presidential
17 exemption pursuant to § 6001 of RCRA, 42 U.S.C. § 6961, or (2) the
18 petitioning of Congress for specific legislative relief.

19 SECTION II

20 STATEMENT OF FACTS

21 A. On or about August 18, 1980, Respondent submitted a
22 Notice of Hazardous Waste Activity pursuant to Section 3010 of
23 RCRA, 42 U.S.C. § 6930, identifying INEL as a generator and
24 transporter of hazardous waste, and a treatment, storage, and
25 disposal (TSD) facility. Identification number ID4890008952 was
26 assigned to INEL.

1 B. Respondent submitted a timely Part A permit
2 application in November 1980, as required by 40 CFR § 270.10(e)(3),
3 which application was subsequently revised.

4 C. During the periods from May 23-27, 1988 and from
5 June 5-8, 1989, EPA personnel inspected the DREL facility to
6 determine compliance with the applicable federal requirements under
7 Subtitle C of RCRA.

8 D. Based on information obtained during these
9 inspections, the following observations were made concerning the
10 facility's hazardous waste management practices:

11
12 1. In the Test Reactor Area (TRA), waste radioactive lead
13 recognized by facility personnel as EP Toxic and,
14 therefore, hazardous waste was observed in storage. The
15 lead had been stored for over one year and was destined
16 for recycling. No lead had been removed from the area
17 within the one year period or recycled. Therefore, the
18 lead was subject to the speculative accumulation
19 requirements of 40 CFR § 261.1(c)(8). The waste lead was
20 observed to be stored in piles, not in accordance with
21 the storage requirements set forth at 40 CFR Part 265.

22
23 2. In the Central Facilities Area (CFA) building CFA-633 lab
24 facility, Room 121, a waste container was observed being
25 managed under the satellite accumulation requirements.
26 However, the associated laboratory process and equipment
27 for the satellite area no longer were present in the

1 area. The waste container which is subject to 40 CFR §
2 262.34(a), was neither labeled as hazardous waste nor
dated, in violation of 40 CFR § 262.34(c)(1).

5 3. In building CFA-637, the hazardous waste storage
6 facility, drums and pallets were observed placed directly
7 against the wall. This prevented access for the
8 necessary movement of personnel or emergency equipment,
9 in violation of 40 CFR § 265.35.

10
11 4. The loading and preparation of 57 hazardous waste drums
12 for shipment off-site was observed while at the CFA. The
13 shipment originated at the Idaho Chemical Processing
14 Plant and was being prepared for shipment to a commercial
15 treatment, storage and disposal facility in Utah. The
shipment contained a drum of trichloroethylene liquid
waste (code U228) restricted by federal regulation from
18 land disposal. The manifests for the shipment did not
19 contain land disposal restriction notifications, in
20 violation of 40 CFR § 268.7(a)(1). The shipment also
21 contained an improperly labeled over pack drum, in
22 violation of 40 CFR § 262.31.

23
24 5. A collection area for waste sand blast grit was observed
25 behind the CFA-623 paint shop building. Facility
26 representatives stated they did not know whether the
27 waste material was hazardous, and were not managing the

1 material as a hazardous waste. The sand blast grit had
2 been generated primarily from cleaning painted objects
3 and, thus, was likely EP Toxic. Failure to make a waste
4 determination based either on knowledge or testing, is in
5 violation of 40 CFR § 262.11.

6
7 6. The CFA-687 lead shop building is a central storage
8 facility at INEL for non-radioactive lead. Several tons
9 of hazardous waste lead were observed in storage in this
10 building. This lead had been in storage for recycling
11 for over one year with no lead identified as having been
12 removed from the area within the past year. Furthermore,
13 the facility was unable to demonstrate that a feasible
14 means of recycling was available. The hazardous waste
15 lead was subject to the speculative accumulation
16 requirements of 40 CFR § 261.1(c)(8) and was not stored
17 in accordance with the requirements set forth at 40 CFR
18 Part 263.

19
20 7. The TAN 657 berm storage area contained five drums with
21 unknown contents in the CTF storage section, and one drum
22 within the fuels facility yard. The contents of these
23 drums was unknown to facility representatives, and no
24 waste determination had been made, in violation of 40 CFR
25 § 262.11.
26
27

- 1 8. The Central Facilities fire training area contained an
2 abandoned drum. The drum was unmarked, contained free
3 liquid of unknown contents, and no waste determination
4 had been made on the contents of the drum, in violation
5 of 40 CFR § 262.11.
- 6
7 9. The Radioactive Waste Management Complex (RWMC) is used
8 for the storage of mixed transuranic waste. The complex
9 includes an air-supported building for the storage of
10 certified and segregated waste (CAS building); the air
11 support weather shield building No. 2; the ILTSF
12 building; and TSA Pads 1 and 2. All areas are used for
13 retrievable storage. The drums in these areas were
14 arranged in dense pack configuration, consisting of drums
15 arranged 5 high, 20 wide, and 20-25 deep. Aisle space
16 was not maintained to allow the proper inspection of
17 drums, or the unobstructed movement of personnel or
18 emergency equipment, in violation of 40 CFR § 265.13 and
19 40 CFR § 265.35.
- 20
21 10. The contingency plan for the radioactive mixed waste
22 storage facility (PMWSF) was reviewed while at the
23 facility. The contingency plan did not contain an up-
24 to-date listing of the current emergency coordinator
25 contact. The facility did not contain all of the
26 emergency response equipment listed in the contingency
27

plan, in violation of 40 CFR § 265.54(d) and 40 CFR § 265.54(e).

11. The Argon National Laboratory-West (ANL-W) alcohol tank farm (tanks 715 and 716) contained waste alcohol contaminated with hazardous waste sodium which had been stored for recycling for up to three years. The facility was unable to demonstrate that the waste alcohol being stored has a feasible means of being recycled, and no waste alcohol had been removed from the tanks for recycling within the past year. The waste alcohol is subject to the speculative accumulation requirements of 40 CFR § 261.1(c)(8) and was not stored in accordance with the requirements set forth at 40 CFR Part 265.

12. The ANL-W area was observed to contain two large, orange tanks and seven smaller tanks for waste sodium. All of the tanks are located near the north fence-line of the facility. The waste sodium storage tanks do not appear on the Part A permit application, in violation of 40 CFR § 270.13. This area had no operating plans, in violation of 40 CFR Part 265.

13. The ANL-W 732 machine shop and paint shop sent used paint-booth filters to the INEL sanitary landfill as solid waste. Although lead- and metal-based paints were observed to be used at the paint shop, no hazardous waste

1 EP Toxicity tests had been performed on the used filters.
2 The facility representative did not know whether the
3 waste material was hazardous waste. There had been no
waste determination made on the paint booth filters, in
violation of 40 CFR § 262.11.

6
7 14. The ANL-W 702 Sodium Drum storage building contained
8 1,400 - 55 gallon drums of hazardous waste sodium from
9 the Detroit Edison Fermi plant. The drums had been
10 stored in this building since 1984. Although the
11 intended use of the material was as feed stock in the
12 manufacture of sodium hydroxide, the manufacturing had
13 not occurred. The building was being operated as a
14 hazardous waste storage facility without a waste analysis
15 plan, inspection schedule, contingency plan, closure
16 plan, or personnel training records; and is not included
on the Part A permit application, in violation of 40 CFR
Part 265 and 40 CFR § 270.72.

19
20 15. The ANL-W 701 security building contained a hazardous
21 waste satellite collection area for solvent-contaminated
22 waste produced from gun cleaning. The satellite drum in
23 use contained no label or other indication of its
24 contents, in violation of 40 CFR § 262.34(c)(1)(ii).

25
26 16. The hazardous waste satellite logbook for the Idaho
27 Chemical Processing Plant (ICPP), CPP-637 laboratory was

1 reviewed. The entry for March 15, 1989 was chosen at
2 random for review. The waste received in the satellite
3 accumulation drum area on this date came from the high
4 bay area, which is not in the vicinity of the satellite
5 accumulation area. Therefore, this hazardous waste
6 collection drum was subject to the requirements for
7 containers of hazardous waste stored less than 90 days.

8 No start date of accumulation was marked on the drum, in
9 violation of 40 CFR § 262.34(c)(1).
10

11 17. The following observations were made at the CPP 619 bay
12 storage facility:

13 a. This area was identified on the March 1989 Part A
14 permit application as a storage unit for mixed waste
15 only. However, no mixed waste had been stored in
16 the unit. During the inspection, hazardous waste
17 was being stored in the unit. Since the unit was
18 not in existence as a mixed-waste storage facility
19 at the time of the Part A permit application, it is
20 not eligible for interim status. Pursuant to 40 CFR
21 § 270.70(b), this shall serve as formal notification
22 of the deficiency.

23 b. The contingency plan for the CPP 619 storage
24 facility did not list an emergency coordinator or
25 available emergency equipment, in violation of 40
26 CFR § 265.52(d).
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c. The equipment storage bay contained a telephone which was not connected at the time of the inspection. Although a radio was also present, the radio check failed to receive a response. Failure to maintain a device capable of summoning emergency assistance is a violation of 40 CFR § 263.32(b).

18. The CPP 633 machine shop contained a pile of hazardous waste lead on the floor. This portion of the shop was identified by facility personnel as an accumulation area. The waste was not stored in a container, in violation of 40 CFR § 262.34(a)(1).

19. The following observations were made during the inspection of the CPP paint shop:

a. The CPP paint shop sent used paint booth filters to the INEL sanitary landfill as solid waste for disposal. The paint shop was observed to use lead and metal-base paints. No EP Toxicity tests had been run on these filters, and process knowledge by facility representatives could not confirm these wastes to be non-hazardous. Failure to make a waste determination is a violation of 40 CFR § 262.11.

b. The outside satellite storage shed for solvent waste contained one 55-gallon drum. The satellite drum contained hazardous waste at the time of the

1 inspection. This drum was not labeled, in violation
2 of 40 CFR § 262.34(c)(1)(ii).

3
4 20. The CPP tank farm contained 11 - 300,000 gallon tanks for
5 storage of corrosive and radioactive waste to be
6 calcined. Review of the engineering drawing and tank
7 specifications revealed that the tanks and associated
8 piping do not have compatible secondary containment for
9 the waste handled, in violation of 40 CFR
10 § 265.193(c)(1).

11
12 21. The following observations were noted at the CPP 1617.
13 The CPP 1617 is a steel structure, mixed waste and
14 radioactive waste storage facility, located within a
15 radiation zone of the ICPP.

- 16
17 a. The CPP 1617 facility did not contain any
18 operational emergency spill response equipment, in
19 violation of 40 CFR § 265.31.
20
21 b. The CPP 1617 facility did not contain any emergency
22 communications equipment, in violation of 40 CFR
23 § 265.32(b).
24
25 c. The CPP 1617 facility did not contain any warning
26 signs, in violation of 40 CFR § 265.14(c).

27 22. The CPP 1617 outside storage yard contained nine drums of
hazardous waste (a corrosive oxidizer solution, HNO₃)
which had been removed from the CPP-621 building. These

1 drums were not labeled or marked with an accumulation
2 start date. The area did not have a contingency plan or
3 training documents, and was operating in violation of 40
4 CFR § 262.34(b) and 40 CFR § 262.34(a)(3).

5
6 23. The CPP nitric acid recycle facility was under
7 construction during the time of the inspection. The
8 facility was included on the Part A permit application,
9 but was not in existence at the time of the Part A
10 submittal, and therefore, is not eligible for Interim
11 Status. Pursuant to 40 CFR § 270.70(b), this shall serve
12 as formal notification of the deficiency.

13
14 24. At the time of the inspection the CPP 601 process
15 equipment waste WC vault alarm was on. This alarm
16 indicated that hazardous waste was within the secondary
17 containment unit. Facility personnel did not respond to
18 the alarm, allowing waste to remain within the secondary
19 containment unit, in violation of 40 CFR § 265.196(b).

20
21 25. The Test Area North (TAN) 674 outside storage facility
22 contained hazardous waste radioactive lead. The lead had
23 been stored over one year. Facility personnel were not
24 able to demonstrate that recycling of the material was
25 feasible, and less than 75% of the waste had been removed
26 within the past year. The lead was subject to the
27 speculative accumulation requirements as specified at 40

1 CFR § 261.1(c)(6), and was not stored in accordance with
2 the requirements set forth at 40 CFR Part 265.

3 26. The TAN 603 weld shop contained a sand-blast tank for
4 parts cleaning. The facility representative did not know
5 whether the waste material was hazardous, and a waste
6 determination had not been performed. Failure to make a
7 waste determination on the sand blast grit, is a
8 violation of 40 CFR § 262.11.
9

10
11 27. The TAN 603 medical unit, which serves as a facility
12 hospital, did not contain a copy of the TAN facility
13 contingency plan, in violation of 40 CFR § 265.53(b).
14

15 28. Based on information received from facility
16 representatives, DOE-ID had stored 11 drums of mixed
17 hazardous waste in an unpermitted storage facility at the
18 TAN facility for over one year. The storage facility was
19 used without operating plans, contingency plan,
20 inspection procedures or training requirements in
21 violation of 40 CFR Part 265.
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SECTION III

PENALTY CALCULATION

A. Section 3008(c) of RCRA, 42 USC §6928(c), authorizes a penalty of up to \$25,000 per day for each violation of the statute. Based upon the facts presented in Section II above, the nature, circumstances, extent and gravity of the above-cited violations, effect on ability of the complainant to conduct its programs, and degree of culpability, the following penalties would normally be proposed upon a non-federal installation:

INITIAL PENALTY CALCULATION

<u>Fact</u>	<u>Regulation</u>	<u>Requirement</u>	<u>Penalty</u>
1.	40 CFR 265	Storage/Operating Plans	\$23,500
2.	262.34(c) (1)	Accumulation	5,000
3.	265.35	Aisle Space	6,000
4.	268.7(a) (1)	Land Ban Notification	21,000
4.	262.31	Labeling	8,000
5.	262.11	Waste Determination	18,000
6.	265	Storage/Operating Plans	22,500
7.	262.11	Waste Determination	15,500
8.	262.11	Waste Determination	17,500
9.	265.13	Waste Analysis	15,400
9.	265.35	Aisle Space	18,900
10.	265.54(d)	Amendment of Contingency Plan	650
10.	265.54(e)	Amendment of Contingency Plan	1200
11.	265	Storage/Operating Plans	24,000
12.	270.13	Part A	450

1	12. 265	Storage\Operating Plans	18,000
2	13. 262.11	Waste Determination	6,500
	14. 270.72	Part A	450
	14. 265	Storage\Operating Plans	18,000
5	15. 262.34(c) (1) (ii)	Accumulation Time	350
6	16. 262.34(c) (1)	Accumulation Time	
7		General Application Requirements	7,000
8	17. 270.70(b)	Qualifying for Interim Status	1,500
9	17. 265.52(d)	Content of Contingency Plan	1,200
10	17. 265.32(b)	Access to Communications	16,000
11	18. 262.34(a) (1)	Accumulation Time	350
12	19. 262.11	Waste Determination	6,500
13	19. 262.34(c) (1) (ii)	Accumulation Time	500
14	20. 265.193(c) (1)	Containment and Detection of Release	22,000
15	21. 265.31	Maintenance and operation of Facility	17,000
	21. 265.32(b)	Required Equipment	6,000
	21. 265.14(c)	Security	6,000
18	22. 262.34(b)	Accumulation Time	650
19	22. 262.34(a) (3)	Labeling	1,400
20	23. 270.70(b)	Qualifying for Interim Status	1,500
21	24. 265.196(b)	Response to Leaks or Spills	20,000
22	25. 265	Storage/Operating Plans	18,500
23	26. 262.11	Waste Determination	8,000
24	27. 265.53(b)	Copies of Contingency Plan	1,400
25	28. 265	Storage/Operating Plan	<u>24,000</u>
26			
27		TOTAL \$	400,400

1
2 B. Because a federal facility is involved, this
3 administrative action seeks correction of violations. Current EPA
4 policy is to not assess monetary penalties against another federal
5 agency.

6
7
8 SECTION IV

9 COMPLIANCE SCHEDULE

10 A. Immediately upon receipt of this Notice, Department
11 of Energy Idaho Operations Office (DOE-ID) shall institute
12 procedures to insure that generator operations do not store
13 hazardous wastes outside of permitted storage areas for periods of
14 time greater than 90 days. Procedures shall also insure that all
15 hazardous waste containers are properly labeled and dated. Within
16 45 days of receipt of this Notice, DOE-ID shall submit a report to
17 EPA describing those methods and procedures followed to assure
18 compliance with 40 CFR § 262.34.

19 B. Immediately upon receipt of this Notice, DOE-ID
20 shall arrange drums and pallets within storage facilities to allow
21 the unobstructed movement of personnel and emergency equipment, in
22 accordance with 40 CFR § 265.35.

23 C. Immediately upon receipt of this Notice, DOE-ID
24 shall supply copies of appropriate contingency plans to facility
25 medical units, and to all other required personnel and locations,
26 in accordance with 40 CFR § 265.53.

1 D. DOE-ID shall immediately upon receipt of this
2 Notice, submit a revised Part A application, in accordance with the
3 provisions at 40 CFR § 270.13. DOE-ID shall also identify and
4 review the status of all Part A units for compliance with 40 CFR
5 Part 265. For any unit determined to be ineligible for interim
6 status, hazardous waste management activities must cease and a
7 closure plan submitted to EPA.

8 E. Within 30 days of this Notice, DOE-ID shall make
9 necessary changes to contingency plans to properly identify the
10 current emergency coordinator, and to provide an accurate list of
11 emergency response equipment, in accordance with 40 CFR § 265.54.

12 F. Within 30 days of this Notice, DOE-ID shall install
13 all emergency equipment required under 40 CFR Part 265, Subpart C.
14 in all hazardous waste storage areas.

15 G. Within 30 days of this Notice, DOE-ID shall install
16 a security system on the active portions of the facility, which
17 system meets the requirements of 40 CFR § 265.14. Signs with the
18 legend "Danger-Unauthorized Personnel Keep Out" shall be posted in
19 accordance with the requirements of 40 CFR § 265.14.

20 H. Within 45 days of receipt of this Notice, DOE-ID
21 shall institute procedures and analyze representative samples of
22 the contents of each waste container (where process knowledge is
23 lacking) being stored or otherwise managed at the facility, prior
24 to their treatment, storage, or disposal, in accordance with 40 CFR
25 § 262.11. Analysis of unidentified waste in permitted storage
26 areas shall be implemented in accordance with a written waste
27 analysis plan which meets the requirements of 40 CFR § 265.13. A

1 copy of such plan(s) shall be submitted to EPA within 45 days of
2 this Notice.

3 I. Within 45 days of this Notice, DOE-ID shall
4 institute procedures to insure that on-site generation of land-ban
5 waste being prepared for off-site shipment is accompanied by proper
6 notification, in accordance with the requirements of 40 CFR §
7 268.7.

8 J. Within 45 days of this Notice, DOE-ID shall prepare
9 operating plans required under 40 CFR Part 265.

10 K. Within 45 days of this Notice, DOE-ID shall provide
11 EPA with a copy of INEL's plan and proposed calendar to manage
12 waste radioactive lead from the INEL facilities. This plan shall
13 include inventory, storage and reduction programs.

14 SECTION V

15 GOALS AND MILESTONES

16 A. It is understood that full compliance with RCRA
17 regulations cannot be achieved immediately at the RWMC and the ICPP
18 tank farm. A schedule for such compliance shall be developed by
19 DOE-ID and be submitted to EPA within 30 days. The schedule shall
20 identify specific short, interim, and long-term actions DOE-ID is
21 undertaking to achieve compliance with the regulations. The
22 compliance schedule shall contain detailed interim milestones for
23 correcting the problems.
24

25
26 B. The Compliance issues of concern at the RWMC and the
27 ICPP tank farm include the following:

2 1. The ICCP tank-farm complex consists of 15 tanks and
3 vaults with associated transfer lines, encasement, valve
boxes, buildings, instruments, cooling and off-gas
6 systems. The secondary containments for the tank farm
7 and associated piping do not meet the RCRA requirements
8 for compatible secondary containment, as required by 40
9 CFR § 265.193.

10 2. The RWMC provides storage for transuranic-contaminated
11 wastes. These waste containers are currently stored in
12 dense pack configurations. RCRA regulations require that
13 at least weekly, the owner/operator must inspect areas
14 where containers are stored, looking for deterioration of
15 containers and the containment system caused by corrosion
16 or other factors, as required in 40 CFR § 265.174. The
current dense pack configuration of hazardous waste
containers at the RWMC does not allow for inspection of
19 container integrity.

20
21
22 SECTION VI

23 SETTLEMENT CONFERENCE

24 A. Within twenty (20) days of your receipt of this
25 Notice, please respond in writing concerning: 1) whether the
26 alleged violations in fact occurred as set forth in Section II; and
27 2) your commitment to develop a compliance program, through a
28 NOTICE OF NONCOMPLIANCE - Page 20 of 21

1 Federal Facility Compliance Agreement with EPA, regarding the
2 applicable regulatory requirements of 40 CFR Parts 260-270.

3 B. Within twenty (20) days of your receipt of this
4 Notice, arrangements should be made for a settlement conference
5 which will initiate the compliance program and its implementation.
6 To schedule this conference, please contact Monica Kirk at EPA,
7 Office of Regional Counsel, 1200 Sixth Avenue, SO-125, Seattle,
8 Washington 98101, or telephone at FTS 399-1506. Any meeting would
9 require the presence of agency officials, or appropriate delegates,
10 who are authorized to sign a Compliance Agreement, and who also
11 have the authority to make the necessary budget requests to correct
12 the violations according to the schedule outlined in the agreement.

13 C. As prescribed in applicable Federal Facilities
14 Executive Orders and related guidance, if corrective measures are
15 not properly taken, these problems may be referred to the Secretary
16 of Energy for appropriate action, or if necessary, presented to the
17 Office of Management and Budget for resolution.

18 SECTION VII

19 SIGNATURE

20 DATED this 29th day of January, 1990.

21
22
23
24
25 *Charles Findlay*
26 Charles E. Findlay, Director
27 Hazardous Waste Division



Notice of Non-Compliance

- INEL RCRA Inspection

Reply to
Attn of: HW-112

JAN 29 1990

1-27-90

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Phillip J. Hamric, Manager
Idaho Operations Office
United States Department of Energy
785 DOE Place
Idaho Falls, Idaho 83402

Dear Mr. Hamric:

On June 5-9, 1989, an inspection of INEL was performed by the U.S. Environmental Protection Agency (EPA) and by the Idaho Department of Health and Welfare (IDHW). EPA's authority to conduct the inspection is provided at § 3007(c) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6927(c). IDHW's authority is pursuant to Idaho Code Section 39-4412 of the Hazardous Waste Management Act of 1983 (HWMMA). The inspection was conducted to determine whether activities at the INEL facility were in compliance with applicable hazardous waste management requirements. At the time of the inspection, Idaho was not authorized to implement the federal program in lieu of EPA. The state has since been proposed for such authorization, and EPA anticipates that IDHW will be the primary enforcer of hazardous waste management requirements in Idaho. Until such authorization has been granted, hazardous waste management facilities in Idaho are subject to both federal and state statutory and regulatory requirements governing hazardous waste management.

Enclosed you will find a Notice of Noncompliance (Notice) issued by EPA; and a proposed Compliance Schedule. The Notice alleges that INEL violated provisions of the hazardous waste regulations, promulgated pursuant to RCRA. Specifically, violations were identified pertaining to satellite accumulation, container storage, speculative accumulation, waste analysis, and storage requirements.

Since a significant amount of time has elapsed since the inspection, some of the violations noted in the enclosed Notice may already have been resolved. Several of the issues have been the subject of discussion, and we understand that the Department of Energy Idaho Operations Office (DOE-ID) is making progress on resolving compliance concerns.

The enclosed Notice contains penalty calculations which identify the magnitude of the penalties for the violations noted, which would normally be levied by EPA against a non-federal facility. The penalties are significant, indicating the seriousness and magnitude of noncompliance at the INEL facility. You should be aware that IDHW may utilize its own enforcement authorities in a separate action regarding the findings from the inspection. If IDHW does take a separate enforcement action, EPA would hope that both actions could be resolved simultaneously.

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Within twenty (20) days of receipt of this Notice, please advise this office of your decision as to the method of resolution you wish to pursue, as provided in Section VI. Depending on your choice of action, you must provide this office within twenty (20) days, with a notification of intent to comply with the provisions of the Notice or make arrangements for a settlement conference. To provide this notification or to arrange for a conference, please contact Monica Kirk, Office of Regional Counsel, U.S. Environmental Protection Agency, 1200 Sixth Avenue, SO-125, Seattle, Washington 98101. She may be reached by telephone at FTS 399-1505. EPA intends that any settlement or resolution of this Notice will be made with the full participation of IDHW.

In the event that resolution of these matters is not obtained, the escalation procedures described in the Notice will be implemented. Correction of the conditions noted in the enclosed Notice may protect you from escalated EPA enforcement action. However, it will not prevent actions on those violations which have already occurred. Nothing in this letter should be construed to waive or limit any remedy available to EPA by virtue of conditions at your facility or the acts or omissions of your department. All submittals required by this action are to be sent to:

Michael F. Gearheard, Chief
Waste Management Branch (HW-112)
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101

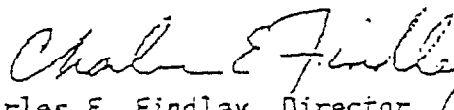
A copy of all submittals required by this action shall be sent to:

Cheryl Koshuta, Chief
Idaho Hazardous Materials Bureau
450 West State Street
Boise, Idaho 83720

Questions regarding the technical aspects of this action should be directed to Jeffry Rodin of EPA (FTS 399-2859). Legal matters should be addressed to Monica Kirk at the address or phone number noted above.

All actions required by this letter and the attached Notice are necessary to avoid risk to human health and the environment. The U.S. Department of Energy bears the ultimate responsibility for taking all steps necessary to comply with applicable regulatory and statutory requirements.

Sincerely,



Charles E. Findlay, Director
Hazardous Waste Division

Enclosure

cc: Richard P. Donovan (with enclosure)
Mark Masarik IOO (with Enclosure)

IDAHO DEPARTMENT OF HEALTH AND WELFARE

IN THE MATTER OF)	CONSENT ORDER
)	
United States Department of Energy,)	Idaho Code § 39-4413
Idaho National Engineering Laboratory)	
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I. PARTIES

- 1.1 The Idaho Department of Health and Welfare (Department) and the United States Department of Energy (DOE), the Parties, enter into this Consent Order regarding DOE's Idaho National Engineering Laboratory (INEL) located near Idaho Falls, Idaho.

II. JURISDICTION

- 2.1 DOE and the Department enter into this Consent Order pursuant to the Idaho Hazardous Waste Management Act of 1983 (HWMA), as amended, Idaho Code §§ 39-4401 to 4432. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., requires each department, agency and instrumentality of the federal government engaged in the disposal or management of hazardous waste to comply with all federal and state requirements respecting the control and abatement of hazardous waste. 42 U.S.C. § 6961; Executive Order 12088. DOE, a department of the executive branch of the federal government, owns and operates the INEL, a nuclear research and development facility located near Idaho Falls, Idaho.
- 2.2 The Department administers a hazardous waste management program pursuant to the HWMA and the Rules, Regulations and Standards for Hazardous Waste, IDAPA §§ 16.01.5000 to 5999. The State of Idaho is authorized, pursuant to RCRA, to administer this hazardous waste management program. 55 Fed. Reg. 11015 (March 26, 1990). DOE generates, transports, and manages hazardous waste at the INEL and is therefore subject to and must comply with all federal and state requirements respecting hazardous waste, including the HWMA and the Rules, Regulations and Standards for Hazardous Waste, IDAPA §§ 16.01.5000 to 5999.
- 2.3 DOE agrees not to contest the jurisdictional elements of this Consent Order or seek administrative or judicial review of this Consent Order.

III. CONCURRENCE BY THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, REGION 10

- 3.1 The United States Environmental Protection Agency, Region 10 (EPA) has reviewed and, by its signature, approves this Consent Order in order to resolve the Notice of Noncompliance (NON) (Docket No. 1090-1-24-6601) issued by EPA to DOE on January 29, 1990. DOE's compliance with the terms of this Consent Order shall be deemed to satisfy any requirements that EPA would otherwise have imposed pursuant to RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616) (HSWA), to resolve the NON.

IV. DEFINITIONS

- 4.1 Except as otherwise specifically defined herein, the terms used in this Consent Order, including all appendices, shall have the same meaning as used in the HWMA and the Rules, Regulations and Standards for Hazardous Waste, IDAPA §§ 16.01.5000 to 5999.

V. STATEMENT OF FACTS

- 5.1 On June 5-9, 1989, EPA and the Department conducted a routine inspection of the INEL to determine compliance with federal and state hazardous waste requirements. The inspection found alleged violations of federal and state hazardous waste requirements, including requirements relating to the generation, accumulation and storage of hazardous wastes.
- 5.2 By NON (Docket No. 1090-1-24-6601) dated January 29, 1990, EPA notified DOE of these alleged violations. DOE does not admit the allegations or other contents of the NON. The NON is, however, expressly incorporated by reference into this Consent Order. On February 21, 1990, DOE submitted to EPA and the Department a timely response to the NON (Response) addressing the alleged violations. DOE supplemented its Response with submittals dated March 16, April 6, and April 13, 1990. On April 18-19, 1990, EPA, the Department and DOE conducted a Settlement Conference to discuss the NON, DOE's Response and a format for resolving the NON. DOE, EPA and the Department have agreed that the NON shall be resolved by execution of this Consent Order between DOE and the Department pursuant to the HWMA, Idaho Code § 39-4413.

VI. HAZARDOUS WASTE REQUIREMENTS

In order to resolve the alleged violations listed in the NON, DOE agrees to the provisions of this Consent Order and the

following terms and actions. The requirements below correspond to the alleged violations as listed in the NON.

6.1 Violation No. 1

DOE has resolved Violation No. 1 by removing all hazardous waste lead located at the TRA to TRA-610, an interim status hazardous waste storage facility.

6.2 Violation No. 2

DOE has resolved Violation No. 2 by removing the hazardous waste container from CFA-633, Room 122, labeling and dating the container pursuant to IDAPA § 16.01.5006 (40 C.F.R. § 262.34(a)), and transferring the container to CFA-637, an interim status hazardous waste storage facility.

6.3 Violation No. 3

DOE shall resolve Violation No. 3 by repositioning, within ninety (90) days of the effective date of this Consent Order, all hazardous waste containers located in Building CFA-637 so as to maintain at all times a minimum of one (1) foot of aisle space between all pallets of containers holding hazardous wastes and all facility walls, and a minimum of two (2) feet of aisle space between individual rows of pallets holding containers of hazardous waste.

6.4 Violation No. 4

DOE has resolved Violation No. 4 by demonstrating compliance with IDAPA §§ 16.01.5006 and 5011 (40 C.F.R. §§ 262.31 and 268.7(a)(1)).

6.5 Violation No. 5

DOE has resolved Violation No. 5 by demonstrating that the sand blast grit generated from the cleaning of painted objects at the CFA-623 Paint Shop Building was not a hazardous waste.

6.6 Violation No. 6

DOE has resolved Violation No. 6 by shipping off-site approximately sixty percent (60%) of the nonhazardous waste lead and stockpiling the remaining nonhazardous waste lead at SPERT-II for use by DOE.

6.7 Violation No. 7

DOE has resolved Violation No. 7 by performing a hazardous waste determination on the five (5) drums of unknown contents located in the TAN-657 Berm Storage Area and the one drum located in the Spent Fuels Facility Yard. The material in the

five (5) drums at TAN-657 was determined to be a hazardous waste and was disposed of by DOE in compliance with the HWMA and the Rules, Regulations and Standards for Hazardous Waste. The material in the one drum at the Spent Fuels Facility Yard was not a hazardous waste.

6.8 Violation No. 8

DOE has resolved Violation No. 8 by demonstrating that the material in the drum at the Central Facilities Fire Training Area was not a hazardous waste.

6.9 Violation No. 9

Violation No. 9 alleged that DOE is storing radioactive mixed waste at the Radioactive Waste Management Complex (RWMC) in violation of the aisle space and inspection requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. §§ 265.15 and 265.35). In order to resolve Violation No. 9, DOE shall take the following actions:

- A. Increase in design capacity of radioactive mixed waste storage facilities.
 1. DOE shall increase the design capacity at the INEL for the storage of the 35,200 containers of radioactive mixed waste in storage at the Radioactive Waste Management Complex (RWMC) on the effective date of this Consent Order. In November 1988, DOE submitted to the Department, pursuant to IDAPA § 16.01.5012 (40 C.F.R. Part 270), a revised Part A application which included an increase in the design capacity of radioactive mixed waste storage facilities at the INEL. On May 29, 1991 DOE submitted to the Department, pursuant to IDAPA § 16.01.5012 (40 C.F.R. Part 270), a Part B permit application for an increase in the design capacity of radioactive mixed waste storage facilities at the INEL. In order to increase the design capacity for the storage of the 35,200 containers of radioactive mixed waste, DOE shall construct four (4) new storage buildings at the INEL.
 2. DOE shall complete transfer of the 35,200 containers of radioactive mixed waste currently in storage to the new storage buildings as follows:
 - a. Fifty percent (50%) of the containers shall be transferred on or before January 1, 1996; and
 - b. The remaining fifty percent (50%) of the containers shall be transferred on or before January 1, 1998.

B. Inspections at new storage buildings.

DOE has proposed, and the Department has agreed, that during the pendency of the Part B permit application procedure, and as long as DOE is operating the new storage buildings under interim status, DOE shall inspect the new storage buildings and the containers of radioactive mixed waste as set forth below in order to comply with the hazardous waste inspection requirements of IDAPA § 16.01.5009 (40 C.F.R. § 265.15).

1. DOE shall conduct weekly health physics surveys of the storage buildings using portable instruments to check for radiation levels and radiation contamination.
2. DOE shall take health physics smear surveys (surveys) of the containers of radioactive mixed waste as follows:
 - a. While containers remain in the air support buildings and prior to their movement to the new storage buildings, DOE shall quarterly take surveys of a minimum of 5% or 120 containers, whichever is less, on a randomly selected basis.
 - b. As the containers are moved from the air support buildings to the new storage buildings, DOE shall take surveys of a minimum of 20% of the containers on a randomly selected basis.
 - c. In the new storage buildings, DOE shall quarterly take surveys of a minimum of 5% or 120 containers, whichever is less, stored in the new storage buildings at the commencement of the quarter on a randomly selected basis.
 - d. In addition, surveys will be taken on any and all containers which are observed to have signs of deterioration.
 - e. Quarters shall commence April 1, July 1, October 1, and January 1.
3. DOE shall conduct weekly visual inspections of containers of radioactive mixed waste from the building center and side aisle by visually looking up and down each aisle space between the rows of containers. The inspector shall move from row to row inspecting each visible container for approximately one-half (1/2) the length of each aisle. The inspector shall proceed from aisle to

aisle, and then move to the opposite end of the aisle and inspect each visible container for the remaining one-half (1/2) length of each aisle. DOE shall also conduct quarterly inspections of containers of radioactive mixed waste stored in each storage building. During the quarterly inspections, the inspector shall walk through each aisle and inspect each visible container for leaks and for deterioration caused by corrosion or other factors. DOE shall maintain an inspection log which shall be used to document all weekly and quarterly inspections, the results of each inspection, and all remedial measures taken by DOE. DOE shall provide the inspection log upon written or oral request by the Department.

4. DOE shall use Continuous Air Monitors (CAMs) to detect radioactive contamination which may be present in the new storage buildings. The CAMs shall be routinely calibrated in accordance with ANSI-N323-1978 Radiation Protection Instrumentation Test and Calibration Requirements. CAM filters shall be changed at least once per week. Each CAM filter shall be analyzed for radioactivity in order to detect airborne radioactive releases.

C. Storage Configuration and Aisle Space.

During the pendency of the Part B permit application procedure, and as long as DOE is operating the new storage buildings under interim status, DOE shall take the following actions regarding the storage configuration of containers of radioactive mixed waste at the new storage buildings. DOE shall also take the actions listed below to comply with IDAPA § 16.01.5009 (40 C.F.R. § 265.35) regarding aisle space at the new storage buildings.

1. Storage Configuration

- a. Width

DOE shall not store containers of radioactive mixed waste in the new storage buildings more than four (4) containers wide.

- b. Height

DOE shall not store drums of radioactive mixed waste in the new storage building more than five (5) drums high and shall not store boxes of radioactive mixed waste in the storage buildings more than four (4) boxes high.

c. Depth

DOE shall not store drums of radioactive mixed waste in the storage buildings more than twenty-four (24) drums deep and shall not store boxes of radioactive mixed waste in the new storage buildings more than twelve (12) deep.

2. Aisle Space

DOE shall provide a minimum of twenty (20) feet of aisle space down the center of each storage building. DOE shall maintain a minimum of three (3) feet of aisle space between all other rows of radioactive mixed waste and between all interior and exterior walls in each of the new storage buildings.

D. Closure of Old Storage Facilities.

DOE shall submit a closure plan for the existing radioactive mixed waste storage facilities (Air Support Buildings: ASB 11 and C&S) at the RWMC within the time frame specified in 40 C.F.R. § 265.112(d). DOE shall perform all closure and post closure requirements for these radioactive mixed waste storage facilities at RWMC pursuant to 40 C.F.R. Part 265, Subpart G.

E. The inspection and monitoring requirements set forth in § 6.9 reflect the agreement of the Department and DOE that certain hazardous waste regulatory requirements will be satisfied by monitoring the radioactive component of the radioactive mixed waste. The requirements of § 6.9 are enforceable to the same extent and in the same manner as any other requirements of this Consent Order. However, nothing in this Consent Order establishes or grants the Department or EPA jurisdiction or authority to independently set requirements, control, or limits, or otherwise regulate, the radioactive component of the radioactive mixed waste.

6.10 Violation No. 10

DOE has resolved Violation No. 10 by updating the Radioactive Mixed Waste Storage Facility (RMWSF) Contingency Plan to include the current Emergency Coordinator, and by ensuring that the emergency equipment listed in the Contingency Plan is located at the facility.

6.11 Violation No. 11

DOE has resolved Violation No. 11 by demonstrating that the industrial ethyl alcohol stored in Tanks 715 and 716 at ANL-W was not a hazardous waste.

6.12 Violation No. 12

A. Violation No. 12 alleged that DOE was storing hazardous waste sodium in violation of the Rules, Regulations and Standards for Hazardous Wastes in two (2) large orange tanks and seven (7) small tanks at ANL-W. Since the time of the inspection, DOE has added two (2) additional small tanks to the sodium storage area at ANL-W. The Department shall dismiss that portion of Violation No. 12 relating to sodium stored in the two (2) large orange tanks at ANL-W based on information provided by DOE that the sodium stored in the tanks is not a solid waste. The Department shall dismiss that portion of Violation No. 12 relating to the sodium stored in four (4) of the nine (9) small tanks at ANL-W based on information provided by DOE that those four (4) tanks were empty at the time of the inspection. DOE has resolved the remaining portion of Violation No. 12 by consolidating the sodium in the remaining (5) small tanks located at ANL-W into one (1) tank and adding the sodium to the Experimental Breeder Reactor-II secondary cooling system during November, 1991.

B. See Section 6.14.D.

6.13 Violation No. 13

DOE has resolved Violation No. 13 by demonstrating that the paint filters in the ANL-W 782 Machine Shop/Paint Shop were not hazardous wastes.

6.14 Violation No. 14

A. Violation No. 14 alleged that, in violation of hazardous waste regulations, DOE was storing 1,400-55 gallon drums of hazardous waste sodium in the ANL-W 703 Sodium Drum Storage Building. DOE denies that the sodium is a hazardous waste, and the parties recognize that DOE and EPA are continuing to discuss the issue of whether or not this sodium is a hazardous waste subject to regulation under applicable hazardous waste laws. DOE shall have a maximum of two (2) years from the effective date of this Consent Order to resolve this issue with EPA through (a) a final decision by EPA that the sodium is or is not a hazardous waste, and administrative review of any such final decision, including exhaustion of any applicable dispute resolution procedures between EPA and DOE; or (b)

amendment or modification of this Consent Order pursuant to § 10.1 of this Consent Order. Pending resolution of this issue with EPA, and commencing on the effective date of this Consent Order, DOE shall manage the sodium in the 1,400-55 gallon drums in compliance with all applicable interim status provisions of the HWMA and the Rules, Regulations and Standards for Hazardous Waste; provided, however, DOE shall be allowed one hundred twenty (120) days from the effective date of this Consent Order to achieve compliance with 40 C.F.R. § 265.13 (waste analysis plan), 40 C.F.R. § 265.37 (arrangements with local authorities), 40 C.F.R. Part 265, Subpart D (contingency plan), and 40 C.F.R. Part 265, Subpart G (closure plan). In the event that, within two (2) years from the effective date of this Consent Order, DOE has not resolved this issue with EPA in a manner that is accepted in writing by the Department (such acceptance shall not be unreasonably withheld), or DOE has not exercised its right to seek any available judicial review of the issue of whether the sodium is a hazardous waste by filing an action in a court of competent jurisdiction, DOE shall be deemed to have waived any argument that the sodium is not a hazardous waste and DOE shall henceforth manage the sodium in compliance with all applicable requirements of the HWMA and the Rules, Regulations and Standards for Hazardous Waste. During the pendency of any judicial review sought by DOE, DOE shall, without admission or prejudice, manage the sodium in compliance with all applicable requirements of the HWMA and the Rules, Regulations and Standards for Hazardous Waste except as may be otherwise agreed to by the parties or ordered by a court of competent jurisdiction.

- B. DOE shall, within thirty (30) days of the effective date of this Consent Order, submit to the Department, pursuant to IDAPA § 16.01.5012 (40 C.F.R. Part 270), a revised Part A permit application for storage of the 1,400-55 gallon drums of sodium. The Part A permit application may be submitted by DOE as a protective filing.
- C. Nothing in this Consent Order, including the requirements of this section, shall constitute an admission nor evidence of an admission by DOE that the sodium is a solid waste or otherwise subject to regulation as a hazardous waste, and nothing in this Consent Order, nor any actions taken pursuant to it, shall prejudice the position of DOE in any administrative or judicial proceeding regarding the sodium. The Department does not agree to be bound by any decision reached as a result of any dispute resolution between EPA and DOE.

- D. Within ninety (90) days of the effective date of this Consent Order, DOE shall submit to the Department a verified report containing the results of tank integrity checks and other relevant evidence demonstrating that sodium has not been released to the environment from the tanks where sodium is stored at ANL-W and from the 1,400-55 gallon drums of sodium. The Department shall, within thirty (30) days of receipt of the report, (a) notify DOE in writing that the Report is approved and no further action is required, or (b) notify DOE in writing of any additional requirements that must be performed in order to ensure that sodium has not been released to the environment. DOE and the Department shall negotiate in good faith to resolve any disputes regarding any additional requirements determined necessary by the Department. If DOE and the Department are unable to agree upon such additional requirements regarding sodium contamination within sixty (60) days of the Department's written notice of such additional requirements, or if DOE fails to perform the requirements of this section, the Department may exercise whatever remedies it may have to insure the proper investigation, cleanup, closure and post-closure care of the area where sodium is or was stored at ANL-W.
- E. Nothing in this section shall preclude the parties from agreeing to undertake any cleanup action regarding the sodium stored at ANL-W under the terms of the Federal Facility Agreement and Consent Order entered into among DOE, the Department and EPA on December 9, 1991, rather than to undertake such cleanup under the terms of this Consent Order.

6.15 Violation No. 15

DOE has resolved Violation No. 15 by labeling the satellite accumulation drum in ANL-W 701 pursuant to IDAPA § 16.01.5006 (40 C.F.R. § 262.34(c)).

6.16 Violation No. 16

DOE has resolved Violation No. 16 by establishing a satellite accumulation area in the Waste Management Development Laboratory at CPP-637.

6.17 Violation Nos. 17a, 17b, and 17c

- A. DOE has resolved Violation No. 17a by submitting to the Department a revised Part A application authorizing DOE to store hazardous wastes and mixed hazardous wastes at CPP-1619.

- B. DOE has resolved Violation No. 17b by updating the Contingency Plan located at the CPP-1619 Mixed Waste Storage Area to include the current Emergency Coordinator and by ensuring that the required emergency equipment contained in the Contingency Plan is located at the facility.
- C. DOE has resolved Violation No. 17c by installing an operational telephone at the CPP-1619.

6.18 Violation No. 18

DOE has resolved Violation No. 18 by demonstrating that the lead at CPP-663 was not hazardous waste lead.

6.19 Violation Nos. 19a and 19b

- A. DOE has resolved Violation No. 19a by demonstrating that the paint booth filters used at the CPP Paint Shop were not hazardous wastes.
- B. DOE has resolved Violation No. 19b by labeling the drum of waste solvent located at the CPP Paint Shop outside storage shed. DOE shall not operate the outside storage shed as a satellite accumulation area for waste solvent. The outside storage shed may be operated as a 90-day hazardous waste storage area in compliance with IDAPA § 16.01.5006 (40 C.F.R. § 262.34 (a)).

6.20 Violation No. 20

Violation No. 20 alleged that tanks and ancillary equipment located at the ICPP Tank Farm are not equipped with secondary containment as required by IDAPA § 16.01.5009 (40 C.F.R. § 265.193). In order to resolve Violation No. 20, DOE shall take the following actions:

A. Lines

DOE shall take the following actions within the time frames set forth below regarding lines at the ICPP Tank Farm.

1. On or before December 31, 1993 DOE shall permanently cease use of Line No. PWL-48048C (3") located between WM-102 and DVB-C37.
2. On or before December 31, 1995 DOE shall permanently cease use of the following lines, or DOE shall replace the following lines with lines which are equipped with secondary containment in compliance with IDAPA § 16.01.5009 (40 C.F.R. § 265.193):

- a. Line No. PUA-1014 (3") located between WL-101 and DVB-A2;
 - b. Line No. PUA-1030 (3") located between WM-102 and DVB-A3A;
 - c. Line No. PWM-2016Y (3") located between WM-101 and DVB-A3B;
 - d. Line No. PUA-201 (3") located between WM-181 and DVB-A2;
 - e. Line No. PUA-203 (3") located between WM-181 and DVB-A2;
 - f. Line No. PUA-1013 (3") located between WL-101 and DVB-A2;
 - g. Line No. PWM-1024Y (3") located between WM-180 and DVB-A3A;
 - h. Line No. PWM-2011Y (3") located between WM-180 and DVB-A3B;
 - i. Line No. PWM-10018Y (3") located between WM-100 and DVB-A3C;
 - j. Line No. PWM-10019Y (3") located between WM-180 and DVB-A3C.
3. On or before March 31, 2009 DOE shall permanently cease use of the following lines:
- a. Line No. PUA-1033 (2") located between WM-182 and DVB-C2;
 - b. Line No. PUA-1099 (2") located between WM-182 and DVB-C2;
 - c. Line No. PUA-1035 (2") located between WM-183 and DVB-C5;
 - d. Line No. PUA-1098 (2") located between WM-183 and DVB-C5.
4. On or before June 30, 2015 DOE shall permanently cease use of the following lines, or DOE shall replace the following lines with lines which are equipped with secondary containment in compliance with IDAPA § 16.01.5009 (40 C.F.R. § 265.193):
- a. Line No. PWM-28004Y (4") located between WM-180 and DVB-C3;

- b. Line No. PWM-28104Y (4") located between WM-181 and DVB-C7;
 - c. Line No. PUA-1089 (3") located between WM-187 and DVB-B9;
 - d. Line No. PUA-1090 (3") located between WM-187 and DVB-B9;
 - e. Line No. PUA-1203 (3") located between WM-188 and DVB-B9;
 - f. Line No. PUA-1204 (3") located between WM-188 and DVB-B9;
 - g. Line No. PUA-1303 (3") located between WM-189 and DVB-B10;
 - h. Line No. PUA-1304 (3") located between WM-189 and DVB-B10;
 - i. Line No. PUA-1315 (3") located between WM-190 and DVB-B10;
 - j. Line No. PUA-1316 (3") located between WM-190 and DVB-B10.
5. DOE shall, whenever possible, restrict the use of all lines which do not comply with the secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) until the lines are replaced or DOE ceases use of the lines as required in this Consent Order.

B. Tanks and Vaults

DOE shall take the following actions within the time frames set forth below regarding tanks and vaults at the ICPP Tank Farm.

- 1. On or before March 31, 1993 DOE shall make improvements to the leak detection system for Valve Box No. DVB-WM-PW-B10 located between WM-187 and WM-190 so as to achieve compliance with IDAPA § 16.01.5009 (40 C.F.R. § 265.193 (c)(3)).
- 2. On or before December 31, 1993 DOE shall achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) regarding the following valve boxes;

- a. Valve Box No. DVB-WM-PW-C2 located between WM-180 and WM-182;
 - b. Valve Box No. DVB-WM-PW-C3 located between WM-180 and WM-182;
 - c. Valve Box No. DVB-WM-PW-C4 located north of WM-180;
 - d. Valve Box No. DVB-WM-PW-C5 located south of WM-183;
 - e. Valve Box No. DVB-WM-PW-C7 located between WM-181 and WM-183;
 - f. Valve Box No. DVB-WM-PW-C9 located on the north of WM-181;
 - g. Valve Box No. DVB-WM-PW-C10 located between WM-181 and WM-183;
 - h. Valve Box No. DVB-WM-PW-C12 located south of WM-181;
 - i. Valve Box No. DVB-WM-PW-C14 located south of WM-185;
 - j. Valve Box No. DVB-WM-PW-C16 located north of WM-184;
 - k. Valve Box No. DVB-WM-PW-C19 located south of WM-186;
 - l. Valve Box No. DVB-WM-PW-C21 located above WM-187;
 - m. Valve Box No. DVB-WM-PW-C22 located above WM-188;
 - n. Valve Box No. DVB-WM-PW-C37 located north of ICPP 604.
3. On or before March 31, 2009 DOE shall permanently cease use of Tank Nos. WM-182, WM-183, WM-184, WM-185, and WM-186 and all associated vaults; or DOE shall achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) regarding Tank Nos. WM-182, WM-183, WM-184, WM-185, and WM-186 and all associated vaults located at the ICPP Tank Farm.
4. On or before March 31, 2009 DOE shall permanently cease use of the following lines, or DOE shall

achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) regarding the following lines associated with vaults located at the ICPP Tank Farm:

- a. Line Nos. PUA-1005 (3") and PUA-1030 (3") located between DVB-A6 and DVB-C15;
 - b. Line Nos. PUA-601 (3") and PUA-602 (3") located between WM-182 and DVB-A6;
 - c. Line Nos. PUA-620 (3") and PUA-621 (3") located between WM-182 and WM-183;
 - d. Line Nos. PUA-609 (3") and PUA-610 (3") located between WM-183 and DVB-A5;
 - e. Line Nos. PUA-630 (3") and PUA-631 (3") located between WM-184 and DVB-A7;
 - f. Line Nos. PUA-208 (3") and PUA-1029 (3") located between WM-185 and DVB-B3;
 - g. Line Nos. PUA-1016 (3") and PUA-1040 (3") located between WM-186 and DVB-B2.
5. On or before June 30, 2015 DOE shall permanently cease use of Tank Nos. WM-180, WM-181, WM-187, WM-188, WM-189, and WM-190 and all associated vaults; or DOE shall achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) regarding Tank Nos. WM-180, WM-181, WM-187, WM-188, WM-189, and WM-190 and all associated vaults located at the ICPP Tank Farm.
6. On or before June 30, 2015 DOE shall permanently cease use of the following valve boxes; or DOE shall achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) regarding the following valve boxes:
- a. Valve Box No. DVB-WM-PW-A5 located between WM-181 and WM-183;
 - b. Valve Box No. DVB-WM-PW-A6 located between WM-181, WM-183, WM-184, and WM-185;
 - c. Valve Box No. DVB-WM-PW-A7 located south of WM-184;

- d. Valve Box No. DVB-WM-PW-B1 located southeast of WM-184;
 - e. Valve Box No. DVB-WM-PW-B4 located west of WM-188;
 - f. Valve Box No. DVB-WM-PW-B5 located west of WM-187 and WM-188;
 - g. Valve Box No. DVB-WM-PW-B9 located west of WM-187 and WM-188;
 - h. Valve Box No. DVB-WM-PW-B10 located between WM-187 and WM-190.
7. On or before June 30, 1993, DOE shall achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) regarding Tank Nos. WL-101 and WL-102.

C. Valve Boxes

- 1. On or before September 30, 1991 DOE completed installation of the leak detection systems on Junction Box No. 7 and all ancillary equipment located at WM-187 and WM-188, and on Junction Box No. 8 and all ancillary equipment located at WM-189 and WM-190. The leak detection systems shall comply with all requirements of IDAPA § 16.01.5009 (40 C.F.R. § 265.193 (c)(3)).
- 2. On or before December 31, 1993 DOE shall re-route the drains associated with Valve Boxes Nos. DVB-WM-PW-A2, DVB-WM-PW-A3A, and DVB-WM-PW-A3B so that hazardous wastes discharged from those valve boxes will no longer drain to unlined vaults.
- 3. On or before December 31, 1995 DOE shall achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) regarding the transfer lines above the unlined concrete portion of Valve Box No. DVB-WM-PW-B2 and Valve Box No. DVB-WM-PW-B3.
- 4. On or before December 31, 1995 DOE shall permanently cease use of Valve Box No. DVB-WM-PW-A3C located north of ICPP-604.
- 5. On or before March 31, 2009 DOE shall permanently cease use of Valve Box Nos. DVB-WM-PW-A2, DVB-WM-PW-A3A, and DVB-WM-PW-A3B.

6. On or before June 30, 2015 DOE shall permanently cease use of, or DOE shall achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) regarding, Junction Box No. 7 located at WM-187 and 188, Junction Box No. 8 located at WM-189 and WM-190, and Valve Box Nos. DVB-WM-PW-B2, DVB-WM-PW-B3, and DVB-WM-PW-C15.
- D. DOE may not satisfy any requirement in this Section (§6.20) of the Consent Order requiring DOE to achieve compliance with all secondary containment requirements set forth in IDAPA § 16.01.5009 (40 C.F.R. § 265.193) by making an equivalency demonstration or obtaining a variance pursuant to IDAPA § 16.01.5009 (40 C.F.R. § 265.193(d)(4) and (h)).
- E. Continued Operation of the Idaho Chemical Processing Plant (ICPP)

DOE expressly agrees that the compliance schedules and deadlines set forth in § 6.20 of the Consent Order shall remain in full force and effect as long as DOE commences and continues operation of the ICPP. In the event that DOE does not commence operation of the ICPP on or before January 1, 1993, or DOE discontinues operation of the ICPP for a period of three (3) or more consecutive years, DOE shall notify the Department and EPA in writing and the parties shall negotiate in good faith to amend or modify this Consent Order, pursuant to § 10.1, to address the closure requirements of IDAPA § 16.01.5008-9 (40 C.F.R. § 264-5) and any other applicable hazardous waste requirements. In addition, DOE may request, pursuant to § 7, an extension of any compliance deadlines for the ICPP.

In the event that the parties are unable to agree upon an amended or modified compliance plan for the ICPP Tank Farm within ninety (90) days of the date DOE notifies the Department and EPA, or the Department and EPA determine, that the ICPP is not operating, § 6.20 of this Consent Order shall become null and void and the Department shall be entitled to take whatever remedies it may have to enforce the applicable provisions of the HWMA, the Rules, Regulations and Standards for Hazardous Waste, or other applicable law.

For purposes of this Consent Order only, operation of the ICPP shall be defined as the calcination of high level liquid radioactive waste stored at the ICPP by operation, under normal conditions, of the New Waste Calcining Facility. Routine repair, replacement and maintenance shall not be deemed operation of the ICPP. DOE shall

submit to the Department every six (6) months commencing July 1, 1992, a report summarizing operations of the ICPP over the previous six (6) months and the schedule for operation of the ICPP for the following six (6) months.

6.21 Violation Nos. 21a, 21b, and 21c

- A. DOE has resolved Violation No. 21a by demonstrating that the necessary emergency spill response equipment was located at CPP-1617 at the time of the inspection.
- B. DOE has resolved Violation No. 21b by installing a telephone at CPP-1617.
- C. DOE has resolved Violation No. 21c by installing warning signs on the fence surrounding CPP-1617 indicating that site access is restricted to authorized personnel.

6.22 Violation No. 22

DOE has resolved Violation No. 22 by performing a hazardous waste determination on the nine drums of waste nitric acid (HNO₃). The nitric acid was a hazardous waste (D002), and DOE has demonstrated that the nitric acid was treated and disposed of on-site in compliance with the HWMA and the Rules, Regulations and Standards for Hazardous Waste.

6.23 Violation No. 23

DOE has resolved Violation No. 23 by demonstrating that DOE's Congressional Budget Request of December 9, 1985 was approved and that funding was received by July 3, 1986 for the construction of the Liquid Effluent Treatment and Disposal facility (LETD).

6.24 Violation No. 24

DOE has resolved Violation No. 24 by installing a new jet system to retrieve liquid waste in the secondary containment area at CPP-601.

6.25 Violation No. 25

DOE has resolved Violation No. 25 by containerizing the hazardous waste lead in the outside storage area at TAN-647 and transporting the hazardous waste lead to the RWMC for storage in compliance with the HWMA and the Rules, Regulations and Standards for Hazardous Waste.

6.26 Violation No. 26

DOE has resolved Violation No. 26 by performing a hazardous waste determination on the waste sand-blast grit at the TAN-

603 Weld Shop. The waste sand-blast grit was a hazardous waste and was disposed of in compliance with the HWMA and the Rules, Regulations and Standards for Hazardous Waste.

6.27 Violation No. 27

DOE has resolved Violation No. 27 by verifying the presence of the TAN-603 Medical Unit Contingency Plan and ensuring that TAN-603 Medical Unit facility personnel are familiar with the Contingency Plan and its contents.

6.28 Violation No. 28

Violation No. 28 alleged that DOE had stored eleven (11) drums of mixed hazardous waste at an unpermitted storage area for over one (1) year. Ten (10) of the eleven (11) drums contained hazardous waste. DOE has resolved Violation No. 28 by transferring the ten (10) drums of mixed hazardous waste to the RWMC for storage in compliance with the HWMA and the Rules, Regulations and Standards for Hazardous Waste.

VII. DELAYS IN ACHIEVING COMPLIANCE

- 7.1 If any event occurs that causes, or may cause, delay in the achievement of any compliance deadline or other requirement of this Consent Order, DOE shall notify the Department in writing within ten (10) days of the date DOE knew, or reasonably should have known, of the event. Any notice under this paragraph should describe in detail the anticipated length of the delay, the precise cause or causes of the delay, all the anticipated consequences of the delay, measures taken by DOE to prevent or minimize the delay, and a timetable by which those measures will be implemented. DOE shall utilize all reasonable measures to avoid or minimize any such delay. If the Department determines that the delay, or anticipated delay, in achieving any of the requirements of this Consent Order has been, or will be, caused by circumstances beyond the reasonable control of DOE, the Department will grant an extension for a period equal to the length of the delay caused by such circumstances. The Department shall notify DOE of its determination within twenty (20) days of the date of receipt of DOE's notification. The burden of proving that any delay is caused by circumstances beyond the reasonable control of DOE shall rest wholly with DOE. In agreeing to the compliance deadlines and other requirements of this Consent Order, DOE has taken into account reasonably foreseeable delays which may be caused by adverse weather conditions, encountering minor amounts of contaminated soil, the need to design equipment for heel removal from tanks and to gain experience operating such equipment, transportation delays, and delays associated with the procurement of parts or the maintenance of machinery or equipment.

- 7.2 DOE may request, pursuant to § 7.1, an extension of the compliance deadlines established by this Consent Order. The Department shall review any such request pursuant to the requirements of § 7.1.

VIII. COMMUNICATIONS

Except as later modified by written agreement of the Parties:

- 8.1 All communications required of DOE by this Consent Order shall be addressed to:

Brian R. Monson, Acting Chief
Operating Permits Bureau
DEQ Permits and Enforcement Division
1410 North Hilton Street
Boise, Idaho 83706

and

Chief, RCRA Compliance Section
USEPA, Region 10
MS-HW 104
1200 Sixth Avenue
Seattle, Washington 98101

- 8.2 All communications required of the Department by this Consent Order shall be addressed to:

Chief, Environmental Support Branch
United States Department of Energy
Idaho Field Office
785 DOE Place
Idaho Falls, Idaho 83401-1562.

IX. ENFORCEABILITY

- 9.1 This Consent Order is enforceable notwithstanding the fact the Department has not issued a Notice of Violation to DOE. DOE expressly recognizes that failure to comply with the terms of this Consent Order may result in an enforcement action for relief available under the HWMA. In any civil or administrative proceeding by the Department or EPA to enforce this Consent Order, DOE agrees not to contest the validity of the provisions of this Consent Order nor the Department or EPA's authority to enforce this Consent Order.
- 9.2 DOE acknowledges that this Consent Order is enforceable pursuant to the citizen suit provisions of RCRA, 42 U.S.C. § 6972, including actions or suits by the State and its agencies. DOE agrees that the State and its agencies are a

"person" within the meaning of § 7002(a) of RCRA, 42 U.S.C. § 6972(a).

- 9.3 DOE agrees that if Congress waives sovereign immunity, or a court of competent jurisdiction determines that sovereign immunity has been waived, for civil or criminal penalties for violations of state hazardous waste laws, the Department may seek, and if appropriate, obtain such remedies in enforcing this Consent Order pursuant to applicable law.
- 9.4 DOE agrees that this Consent Order shall be admissible as evidence in any proceeding to enforce this Consent Order.

X. AMENDMENT, MODIFICATION AND TERMINATION

- 10.1 Except as set forth in § 10.5, this Consent Order may only be amended or modified by mutual agreement of the Department, DOE and EPA. Any amendment or modification of this Consent Order shall be in writing, shall have as the effective date the date of signature by the Director of the Department, and shall be incorporated into this Consent Order and be enforceable in the same manner as any other requirement of this Consent Order.
- 10.2 In the event there is a change in applicable state or federal law or regulation, this Consent Order may be amended or modified to incorporate such change. During the pendency of any such amendment or modification, this Consent Order shall remain in effect unless an exemption is provided in writing by the Department.
- 10.3 This Consent Order shall bind DOE, its employees, officers, directors, officials, trustees, contractors, subcontractors, consultants, tenants, agents, successors and assigns until such time as the terms of the Consent Order are met and the Consent Order is terminated in writing by the Department. Such written termination shall not be unreasonably withheld.
- 10.4 This Consent Order shall not relieve DOE from its obligation to comply with any of the applicable provisions of the HWMA or the Rules, Regulations and Standards for Hazardous Waste, IDAPA §§ 16.01.5000 to 5999, including any permit, closure, post-closure or other hazardous waste requirements. Nor does this Consent Order relieve DOE from its obligation to comply with any other applicable federal, state, or local law, or any interagency or other agreements between the Department and DOE.
- 10.5 The requirements of this Consent Order may be amended or modified by the Department upon issuance of a permit pursuant to the HWMA and the Rules, Regulations and Standards for Hazardous Waste. At the election of the Department, the

requirements of this Consent Order may be incorporated, with or without change, in any permit issued by the Department. Requirements of this Consent Order incorporated into a final, enforceable permit issued by the Department shall no longer be enforceable under this Consent Order. The Department shall notify DOE in writing if the Department decides to include in any draft permit any permit condition that is inconsistent with the requirements of this Consent Order.

XI. FUNDING

- 11.1 DOE shall take all necessary steps to obtain sufficient funding to comply with the provisions of this Consent Order and, once obtained, shall obligate those funds for the purpose of compliance with this Consent Order. The terms of DOE's Five Year Plan shall be consistent with the provisions of this Consent Order, including all compliance deadlines contained in this Consent Order. DOE's Five Year Plan shall be drafted and updated in a manner that ensures that the provisions of this Consent Order are incorporated into the DOE planning and budget process. Nothing in the Five Year Plan shall be construed to affect the enforceability of any provision of this Consent Order.
- 11.2 DOE maintains that any requirement for the payment or obligation of funds under this Consent Order is subject to the provisions of the Anti-Deficiency Act, 31 U.S.C. § 1341. DOE also maintains that any requirement for the payment or obligation of funds under this Consent Order is subject to the availability of appropriated funds and that the unavailability of such funds may constitute a valid defense to any administrative or judicial action that may be brought to enforce the terms of this Consent Order. The Department recognizes the provisions of the Anti-Deficiency Act but does not agree that the Anti-Deficiency Act, or failure to obtain adequate funds or appropriations to comply with this Consent Order, shall constitute a circumstance beyond the reasonable control of DOE or shall constitute a release from or defense to any administrative or judicial action which may be brought to enforce this Consent Order. DOE and the Department agree that it is premature to raise the validity of such a defense at this time. If, at any time, adequate funds or appropriations are not available to comply with this Consent Order, DOE shall notify the Department in writing and the Department shall determine whether or not it is appropriate to adjust the deadlines set forth in this Consent Order. DOE reserves the right to raise the Anti-Deficiency Act as a defense to any action brought to enforce this Consent Order.

XII. COVENANTS AND RESERVATIONS

- 12.1 This Consent Order shall stand in lieu of any administrative, legal and equitable remedies which are available to the Department or EPA against DOE and all parties bound by this Consent Order with respect to the matters addressed by this Consent Order, so long as DOE and all parties bound by this Consent Order are in compliance with the Consent Order as determined by the Department or a court of competent jurisdiction.
- 12.2 Except as specifically set forth in this Consent Order, the Department expressly reserves all of its statutory and regulatory powers, authorities, rights, remedies, and defenses, both legal and equitable, which relate to the failure of DOE to comply with any of the requirements of this Consent Order. The Department reserves the right to disapprove of work performed by DOE. Except as set forth in § 12.1, this Consent Order shall not be construed as a covenant not to sue, a release, a waiver or a limitation of any rights, remedies, powers or authorities, civil or criminal, which the Department has under the HWMA or any other statutory, regulatory, or common law.
- 12.3 Except as specifically set forth herein, DOE reserves and does not waive any rights, authority, claims or defenses, including sovereign immunity, that it may have or wish to pursue in any administrative, judicial or other proceeding with respect to any person; nor does DOE waive any immunity from payment of fines or penalties; nor does DOE waive any claim of jurisdiction over matters which may be reserved to DOE by law, including the Atomic Energy Act. Nothing in this Consent Order shall constitute an admission on the part of DOE, in whole or in part, in any proceeding except in a proceeding to enforce this Consent Order. DOE specifically reserves all rights it may have by law to seek and obtain administrative or judicial review or appeal according to law of any determination made by the Department or EPA during DOE's performance of its obligations under this Consent Order. During the pendency of any such administrative review or appeal, DOE shall continue to comply with the requirements of this Consent Order. DOE also specifically reserves all rights it may have by law to seek and obtain administrative or judicial review or appeal of permit requirements.
- 12.4 Except as specifically set forth herein, this Consent Order in no way restricts the State of Idaho or the Department from taking action to address past, present or future violations of the HWMA, the Rules, Regulations and Standards for Hazardous Waste, or other applicable law.
- 12.5 The Department, DOE and EPA agree that EPA reserves all oversight and enforcement authorities EPA possesses regarding

all matters addressed in this Consent Order. EPA's rights include, but may not be limited to, the right to take action under the applicable provisions of the Solid Waste Disposal Act, as amended by RCRA, and the right to enforce the hazardous waste Memorandum of Agreement between the State of Idaho and EPA which became effective on April 9, 1990.

XIII. STATE OR EPA LIABILITY

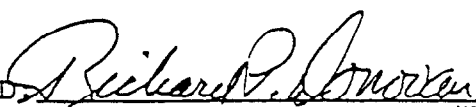
- 13.1 Nothing in this Consent Order shall be deemed to extend to the Department, the State of Idaho, or EPA any liability under any federal, state, or local law.

XIV. EFFECTIVE DATE


- 14.1 The effective date of this Consent Order shall be the date of signature by the Director of the Idaho Department of Health and Welfare. Each of the undersigned representatives of the Parties warrants that he or she is fully authorized to and does hereby enter into and legally bind his or her agency to this Consent Order.

SO AGREED:

DATE April 3, 1992

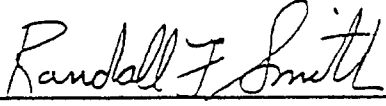
SIGNED: 
RICHARD P. DONOVAN
DIRECTOR
IDAHO DEPARTMENT OF HEALTH
AND WELFARE

DATE 3/24/92

SIGNED: 
AUGUSTINE A. PITROLO
MANAGER
U.S. DEPARTMENT OF ENERGY
IDAHO OPERATIONS OFFICE

APPROVED/CONCURRED:

DATE 3/30/92

SIGNED: 
RANDALL F. SMITH
DIRECTOR
HAZARDOUS WASTE DIVISION
U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION 10

IDAHO DEPARTMENT OF HEALTH AND WELFARE

IN THE MATTER OF)	MODIFICATION TO
)	CONSENT ORDER
United States Department of Energy,)	
Idaho National Engineering Laboratory)	Idaho Code § 39-4413
<hr/>		

I. Pursuant to § X, Amendment, Modification and Termination, of the Consent Order between the Department of Energy (DOE) and Idaho Department of Health and Welfare (Department) effective April 3, 1992, the parties agree to the following modification: The modification is based upon the district court's amended order in United States of America v. Andrus dated December 22, 1993 (Amended Court Order). The requirements and schedule of sections 6.20.A through 6.20.E of this Consent Order shall remain in full force and effect. The Department and DOE agree to modify this section 6.20.F in the event the Amended Court Order is modified.

II. Section 6.20. Violation No. 20 is modified to read:

6.20 Violation No. 20

F. Pursuant to the Stipulation and Agreement by the parties and the Amended Court Order:

1. DOE shall accelerate activities related to the treatment and disposal of high-level radioactive wastes stored at INEL by taking the following actions:
 - a. Calcine all high-level liquid radioactive waste that does not contain sodium on or before January 1, 1998.
 - b. Calcine or otherwise process as much sodium-bearing high-level liquid radioactive waste (sodium-bearing waste) as DOE and the Department mutually agree is practicable by January 1, 1998.
 - c. DOE will evaluate and test Freeze Crystallization, Radionuclide Partitioning, and Precipitation, the sodium bearing treatment technologies identified by DOE in a November 15, 1993 letter.

- d. Select the sodium-bearing waste pre-treatment technology, if necessary, and calcine or processing technology by June 1, 1995.
- e. Select a technology for converting calcined waste into an appropriate disposal form by June 1, 1995.

2. Facility Construction.

Once technologies for sodium-bearing waste calcination and calcine conversion into a disposal form have been selected, the Department and DOE will, within ninety (90) days, enter into negotiations on the construction schedule for any necessary facilities to implement the technologies.

3. High-Level Waste Tank Farm Replacement.

If the Record of Decision for the Programmatic Spent Nuclear Fuel and INEL Environmental Restoration and Waste Management Environmental Impact Statement requires replacement of any of the high-level liquid tanks, DOE will complete all preparatory work and will begin construction of the replacement tanks by close of construction season 1996; complete vault construction and initiate tank erection by October 1, 1998; and use its best efforts to complete construction by 1999 construction season, but no later than four (4) years after start of construction.

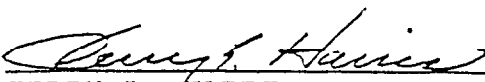
- 4. In addition to the report required in section 6.20.E, DOE will include an update on the status of activities required under section 6.20.F (1)-(3).

III. If the Parties agree, under Section X (Amendment, Modification and Termination) of the Consent Order, to amend or modify Section 6.20.F, or if the Department determines it is appropriate to grant an extension, under Section VII (Delays in Achieving Compliance) to the Schedules included in Section 6.20.F, then the Parties agree that each will provide appropriate support, including the filing of appropriate stipulations and other documents, in the United States District Court for the District of Idaho to obtain appropriate conforming modifications to the Amended Court Order.

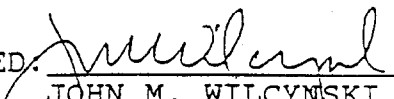
IV. The effective date of this Modification shall be the date of signature by the Director of the Idaho Department of Health and Welfare. Each of the undersigned representatives of the Parties warrants that he is fully authorized to and does hereby enter into and legally bind his agency to this Modification.

SO AGREED:

DATE: 3/17/94

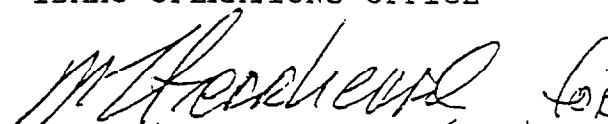
SIGNED: 
JERRY L. HARRIS
DIRECTOR
IDAHO DEPARTMENT OF HEALTH
AND WELFARE

DATE: 2/28/94

SIGNED: 
JOHN M. WILCZYNSKI
ACTING MANAGER
U.S. DEPARTMENT OF ENERGY
IDAHO OPERATIONS OFFICE

APPROVED/CONCUR;

DATE: 3-11-94


SIGNED: RANDALL F. SMITH
U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGION X

THMODIFY.CO/lvh
February 23, 1994

IDAHO DEPARTMENT
OF HEALTH AND WELFAREDIVISION OF
ENVIRONMENTAL QUALITY

1410 North Hillon, Boise, ID 83706-1255 (208) 373-0602

Philip E. Ball, Governor

August 18, 1998

John M. Wilcynski MS-1103
DOE - Idaho Operations Office
850 Energy Drive
Idaho Falls, ID 83401-1563

Charles C. Clarke
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101

Dear Mr. Wilcynski and Mr. Clarke:

Enclosed are your effected copies of the Second Modification to Consent Order to the Notice of Noncompliance issued January 29, 1990.

Sincerely,

W. N. Cory
Assistant Administrator

f Wallace N. Cory, P.E.
Administrator

WNC/rla INEEL98NONCOSIGNEDCOLTR

Enclosure

cc: Brett Bowhan, DOE-Legal
Catherine Massimino, EPA Region 10
Kathleen Trever, INEEL Oversight
Kate Kelly, AGs
Dave Pisarski, DEQ-CAB
Brian Monson, DEQ-HWPB
INipnw
INipc
COF

6/30/99 - out of WA-172 → 173

- 175 at time - required
task to be completed

12/31/00 - submit closure plan for
no Task III

4/30/00 - that date was due

6/1/00 - decide on permit
to be provided

12/31/00 - submit SLRA (VIA)

Every 1/1 & 7/31 - submit - F

IDAHO DEPARTMENT OF HEALTH AND WELFARE

IN THE MATTER OF

United States Department of Energy

Idaho National Engineering and Environmental Laboratory

) SECOND
) MODIFICATION TO
) CONSENT ORDER

) Idaho Code § 39-4413
)

I. Pursuant to the Hazardous Waste Management Act of 1983, Idaho Code §§ 39-4401, et seq., the U.S. Department of Energy (DOE) and the Idaho Department of Health and Welfare (Department) (together the "Parties") entered into a Consent Order effective April 3, 1992. The purpose of the Consent Order was to resolve alleged violations contained in a Notice of Noncompliance (Docket No. 1090-1-24-6601) issued by the United States Environmental Protection Agency (EPA) to DOE on January 29, 1990. As provided in Section X of the Consent Order, the Parties entered into a Modification to Consent Order, effective March 17, 1994, (hereinafter First Modification to Consent Order) adding Section 6.20.F to the Consent Order. That First Modification to Consent Order was based on requirements in the court's amended order in United States of America v. Andrus, Civil No. 91-0035-S-HLR (lead case) (D.Id.), dated December 22, 1993. The United States Environmental Protection Agency, Region 10 (EPA) reviewed and, by its signature, approved the Consent Order and the Modification to Consent Order. This Second Modification to Consent Order modifies and is incorporated into the April 3, 1992, Consent Order and supersedes the First Modification to Consent Order. Unless specifically provided herein, all terms and conditions of the Consent Order remain in full force and effect and shall be binding upon the Parties.

II. Pursuant to Section X of the Consent Order, the Parties agree to this Second Modification to Consent Order. This Second Modification supersedes the First Modification. This modification revises the requirements of the 1992 Consent Order (as amended) making the Consent Order schedule consistent with the schedule set forth in Section E.5. of the Court Order in United States of America v. Batt, Civil No. 91-0054-S-EJL (D.Id.) dated October 17, 1995. This Second Modification is also necessary because DOE has not submitted a technically adequate permit application for the Calciner that meets the requirements of IDAPA 16.01.05.008 [40 CFR § 264]. DOE changed the name of the Idaho Chemical Processing Plant (ICPP) to the Idaho Nuclear Technology and Engineering Center (INTEC) after the effective date of the Consent Order. The Consent Order is amended by substituting the Idaho Nuclear Technology and Engineering Center (or its acronym INTEC)

for the Idaho Chemical Processing Plant (or its acronym ICPP) wherever it appears in the Consent Order.

- III. The language of Section 6.20.B.3 of the Consent Order is deleted and entirely replaced by the following:

6-23 "On or before June 30, 2003, DOE shall permanently cease use of Tank Nos. WM-182, WM-183, WM-184, WM-185, and WM-186 ("WM-182 through 186") except that Tank WM-185 may be used as an emergency spare tank until closure or until sufficient tank volume is available for emergency use in one of the operating INTEC Tank Farm Facility (TFF) tanks, whichever comes first. DOE shall submit a closure plan to the Department under the requirements of IDAPA 16.01.05.009 [40 CFR Part 265, Subpart G] for at least one of these tanks on or before December 31, 2000. Prior to using Tank WM-185 as an emergency spare tank, DOE shall submit information regarding tank integrity to address IDAPA 16.01.05.009 (40 CFR §265.191(b)). If a Professional Engineer's certification is not included in DOE's submittal, the Department may: (a) Determine that tank WM-185 may not be used as an emergency spare tank, or (b) Require conditions for DOE to use tank WM-185 as an emergency spare tank."

5 part assessment (1) design (2) Haz. char. of material (3) corrosion protection, (4) age, (5) leak test

- IV. Sections 6.20.A.3, 6.20.B.4, and 6.20.C.5 of the Consent Order are modified so that the date "March 31, 2009" is replaced with the date "June 30, 2003," except for possible use associated with WM-185 as the emergency spare tank.

- V. Sections 6.20.A.4, 6.20.B.5, 6.20.B.6, and 6.20.C.6 of the Consent Order are modified so that the date "June 30, 2015" is replaced with the date "December 31, 2012" to conform to Section E.5. of the Settlement Agreement.

- VI. The language of Section 6.20.E of the Consent Order is deleted and replaced by the following:

"E. Continued Operation of the New Waste Calciner Facility

- Subject to the conditions of Section 6.20.E.2, DOE may continue to operate the Calciner at the New Waste Calcining Facility (NWCF) until April 30, 1999. Unless, and until, the Department has issued a hazardous waste permit for its continued operation, after April 30, 1999, the Calciner shall be in standby mode. At such time as DOE decides to operate or close the Calciner, which shall be no later than June 1, 2000, DOE shall provide written notice of its decision to the Department and EPA. Based on this decision, DOE shall either: (a) submit a closure plan to the Department for approval for closure of the Calciner system(s) under the requirements of IDAPA 16.01.05.009 [40 CFR Part 265, Subpart G] within 90 days of the written notice, or (b) submit a schedule to the Department for review and approval within 30 days of the written notice for submittal of a permit application for the Calciner system(s). DOE must comply with all applicable permitting requirements of IDAPA 16.01.05.008, .012 [40 CFR Parts 264 and 270] prior to operating the

Calciner. In the event that a decision is made to operate the Calciner, the Calciner shall remain in standby mode until a final permit decision is made by the Department pursuant to the procedures of IDAPA 16.01.05.013 [40 CFR §124]. Routine repair, replacement, and maintenance of the Calciner will not be deemed operation of the Calciner. Such activities may be conducted while the Calciner is in standby mode.

2. On October 2, 1997, the Department and EPA received a preliminary Screening Level Risk Assessment document from DOE for the Calciner. In response to comments made by the Department, DOE shall submit a final document to the Department and EPA no later than December 31, 1998. It is agreed that the finalized document will address the comments and concerns issued by the Department on March 17, 1998. If, associated with the finalization of the Screening Level Risk Assessment, it is determined by the Department that DOE cannot demonstrate that the Calciner can be operated in a manner protective of human health and the environment, then the Department may require DOE to cease operation of the Calciner."

VII. Section 6.20.F shall be added as follows:

"F. INTEC Tank Farm Waste Reports.

Commencing July 31, 1998, and on or before every January 31 and July 31 thereafter, DOE shall submit to the Department a report summarizing activities regarding the TFF wastes over the previous six (6) month period. The report shall include a tank-by-tank listing of total remaining volume and volume reduction for the reporting period for the operating TFF tanks, identification of the source and volume of any waste added to the TFF, and the proposed schedule for operation of the INTEC for the next six (6) month period, including the estimated volumes of waste to be removed from or added to the TFF. The six (6) month periods that the reports cover are, inclusively, from January 1 through June 30 and from July 1 through December 31."

VIII. A new Section 6.20.G shall be added as follows:

"G. ~~Emptying of Tanks.~~

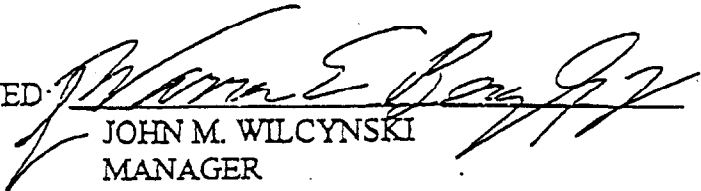
~~When DOE is required, by this Section 6.20, to "cease use" of tanks, DOE must empty the tanks down to their heels, i.e., the liquid level remaining in each tank will be lowered to the greatest extent possible by the use of existing transfer equipment. Closure plans developed for these tanks will address the remaining heel and vaults, and the use of these tanks and equipment for closure including any flushing or other cleaning of the tanks."~~

- IX. The effective date of this Second Modification to Consent Order shall be the date of signature by a representative of the Idaho Department of Health and Welfare. Each

of the undersigned warrants that he or she is fully authorized to and does hereby enter into and legally bind his or her agency to this Second Modification to Consent Order.

SO AGREED:

DATE: 7/31/98 SIGNED: _____


JOHN M. WILCYNSKI
MANAGER

U.S. DEPARTMENT OF ENERGY
IDAHO OPERATIONS OFFICE

DATE: 8/18/98 SIGNED: _____


WALLACE N. CORY, P.E.
ADMINISTRATOR

IDAHO DEPARTMENT OF HEALTH AND WELFARE

APPROVED/CONCUR:

DATE: 8-12-98 SIGNED: _____


CHARLES C. CLARKE
REGIONAL ADMINISTRATOR

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION X



OFFICE OF THE GOVERNOR

P.O. BOX 43720
BOISE 83720-0034PHILIP E. BATT
GOVERNOR

November 6, 1998

John Wilcynski MS-1103
Department of Energy
Idaho Operations Office
850 Energy Drive
Idaho Falls, ID 8340-1563

Dear Mr. Wilcynski:

I write to clarify some apparent confusion concerning the state of Idaho's position relative to future operations of the New Waste Calcining Facility (the calciner).

DOE, EPA and the state of Idaho recently agreed to modify a consent order originally signed in 1990. The modification provides that DOE will not operate the calciner beyond April 30, 1999 unless the facility is permitted under the Idaho Hazardous Waste Management Act. The agencies made this modification because DOE had, for several years, been unable to supply the detailed data necessary to proceed with permitting the facility and to demonstrate long-term protectiveness to human health and the environment. A central deficiency concerned the monitoring of stack emissions.

DOE continues to work with the state and EPA to implement acceptable off-gas monitoring methods for the calciner, and DOE is currently conducting pilot studies to evaluate new monitoring technologies. DOE is also addressing certain issues related to waste characterization. Should these efforts prove successful and demonstrate protectiveness of human health and the environment, the state will revisit the consent order's schedule for calciner operations with DOE and EPA.

As you know, operation of the calciner, in compliance with all federal statutes and regulations, formed the basis for the 1995 court settlement deadline for calcining sodium-bearing liquid waste by 2012. The calciner and other proposed facilities are currently being evaluated by DOE and the state of Idaho as they prepare an environmental impact statement (EIS) for INEEL high-level waste treatment. The information being developed by DOE for the calciner is likely to be necessary regardless of the approach selected in the EIS for converting the liquid waste into a solid form.

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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

April 20, 1999

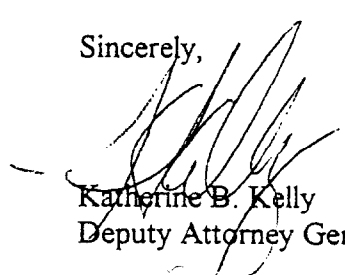
Brett Bowhan
Idaho Operations Office
U.S. Department of Energy
850 Energy Drive
Idaho Falls, Idaho 83401-1563

Re: Third Modification to Consent Order

Dear Mr. Bowhan:

Enclosed for your files please find a signed original of the Third Modification to Consent Order. The other two original documents have been retained in the files of DEQ and EPA.

Sincerely,


Katherine B. Kelly
Deputy Attorney General

KBK/sc

Enclosure

*copies to
J. L. ...
P. ...
K. ...
T. ...
J. ...
J. ...
G. ... 3211
M. ...
C. ...
D. ...
The ...
file original in
H. L. K. ...
(acknowledgment
of receipt)
(encl.)*

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APR 26 1999

OFFICE OF THE CHIEF COUNSEL

IDAHO DEPARTMENT OF HEALTH AND WELFARE

IN THE MATTER OF)	THIRD
)	MODIFICATION TO
United States Department of Energy)	CONSENT ORDER
<u>Idaho National Engineering Laboratory</u>)	Idaho Code § 39-4413

- I. Pursuant to the Hazardous Waste Management Act of 1983, Idaho Code §§ 39-4401, et seq., the U.S. Department of Energy (DOE) and the Idaho Department of Health and Welfare (Department) (together the "Parties") entered into a Consent Order effective April 3, 1992. The purpose of the Consent Order was to resolve alleged violations contained in a Notice of Noncompliance (Docket No. 1090-1-24-6601) issued by the United States Environmental Protection Agency (EPA) to DOE on January 29, 1990. As provided in Section X of the Consent Order, the Parties entered into a Modification to Consent Order, effective March 17, 1994, (hereinafter "first" Modification to Consent Order) adding Section 6.20.F to the Consent Order. The Parties subsequently entered into a Second Modification to Consent Order effective August 18, 1998. The Second Modification to Consent Order superseded the first Modification to Consent Order. The United States Environmental Protection Agency, Region 10 (EPA) reviewed and, by its signature, approved the Consent Order, the first Modification to Consent Order, and the Second Modification to Consent Order. This Third Modification to Consent Order modifies and is incorporated into the April 3, 1992 Consent Order as modified by the Second Modification to the Consent Order. Unless specifically provided herein, all terms and conditions of the Consent Order and the Second Modification to Consent Order remain in full force and effect and shall be binding upon the Parties.
- II. The language of Section 6.20.E.1 of the Consent Order as it appears in Section VI of the Second Modification to Consent Order is modified so that the date of "April 30, 1999" is replaced with the date of "June 1, 2000" in the two places it appears.
- III. The language of Section 6.20.E.2 of the Consent Order as it appears in Section VI of the Second Modification to Consent Order is deleted and replaced by the following:
 - "2. Notwithstanding Section 6.20.E.1, before June 1, 2000, the Department may require that DOE immediately cease operation of the Calciner and place the Calciner in a standby mode if the Department determines that DOE has failed to comply with any of the following conditions:
 - a. Continued operation of the Calciner shall not present a hazard to the public health, the public safety, or the environment;
 - b. So long as the Calciner continues operation, DOE shall implement a project to sample offgas emissions from the Calciner. A key purpose of the off-gas sampling project shall be to support DOE's decision whether DOE will attempt to meet the performance standards in IDAPA 16.01.05.008 [40 CFR 264 Subpart O] and the pending Maximum Achievable Control Technology standards. Commencing June 7, 1999, and on the 7th of each month thereafter, until the month succeeding placement of the Calciner in standby mode, DOE shall provide to the Department a report summarizing data

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OFFICE OF THE CHIEF COUNSEL

gathering activities associated with the off-gas emissions sampling project. If these data indicate that the Risk Assessment emission rate values are not conservative with respect to risk, DOE shall submit to the Department a revised Screening Level Risk Assessment incorporating and taking into account information resulting from the off-gas emissions sampling project.

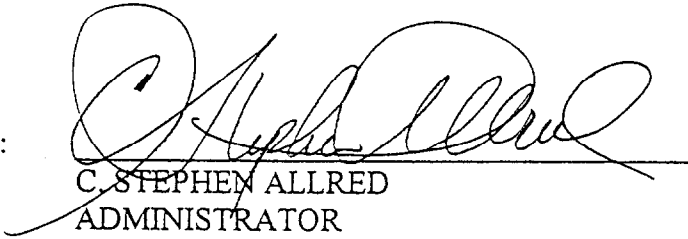
- c. Before June 1, 2000, the Calciner may require a maintenance outage lasting approximately 90 days. DOE may also need to cease operation of the Calciner for shorter periods for repair or maintenance. Between the effective date of this Third Modification to Consent Order and before the Calciner is placed in standby, the dissolution of the Calciner bed shall occur only once.
- d. By July 31, 1999, DOE shall submit to the Department a report detailing the past studies, current status and estimated life of the eleven 300,000-gallon INTEC tanks, and ancillary equipment, based upon existing data. By November 15, 1999, DOE shall submit an amendment to the report to the Department. The amendment shall include a detailed long-term plan and schedule for inspection and corrosion coupon evaluation for the tanks, a corrosion evaluation of the visual data from the light duty utility arm entry into Tank WM-188, and the corrosion coupon data from Tank WM-182."

IV. The effective date of this Third Modification to Consent Order shall be the date of signature by all three parties. Each of the undersigned warrants that he or she is fully authorized to and does hereby enter into and legally bind his or her agency to this agreement.

SO AGREED:

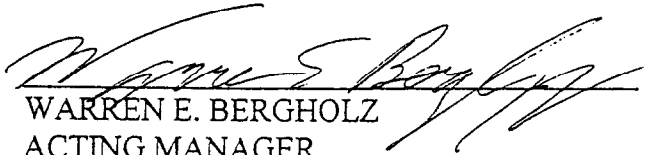
DATE: 4/15/99

SIGNED:


C. STEPHEN ALLRED
ADMINISTRATOR
IDAHO DEPARTMENT OF HEALTH
AND WELFARE

DATE: 4/15/99


SIGNED:


WARREN E. BERGHOLZ
ACTING MANAGER
U.S. DEPARTMENT OF ENERGY
IDAHO OPERATIONS OFFICE

APPROVED/CONCUR:

DATE: 4/19/99

SIGNED:


CHARLES C. CLARKE
REGIONAL ADMINISTRATOR, REGION X
U.S. ENVIRONMENTAL PROTECTION
AGENCY